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July 30, 2001

Honorable Robert C. Petersen, Assessor
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

***Re: Change in Ownership - Membership Interests In
Limited Equity Cooperatives - Section 62.1(c)***

Dear Mr. Peterson:

This is in response to your letter dated March 5, 2001, in which you request our opinion as to whether a change of ownership in a resident owned mobile home park formed as a limited equity cooperative is a reassessable change in ownership for property tax purposes. You include a letter from Mr. (Taxpayer), in which he contends that, because limited equity cooperatives restrict ownership of corporate equity to the corporation itself, which has no stockholders, unlike stock cooperatives, a transfer of a membership interest in the limited equity cooperative is not a transfer of an ownership interest in the park real property. As such, Taxpayer contends that limited equity cooperatives are specifically excluded from pro rata changes in ownership pursuant to Revenue and Taxation Code section 62.1, subdivision (c), since they are not a "cooperative housing corporation" pursuant to Revenue and Taxation Code section 61, subdivision (i).

For the reasons we will set forth below, we respectfully disagree with Taxpayer's conclusion. It is our opinion that limited equity cooperatives are "cooperative housing corporations" as that phrase is used in section 61(i), and that transfers of memberships therein are reassessable changes in ownership of the portion of the property transferred. Moreover, that they are specifically excluded from the pro rata change in ownership provisions of section 62.1(c) is further evidence of this conclusion.

As you know, subdivision (a) of section 62.1 excludes certain transfers of mobilehome parks from change in ownership. As was discussed in more detail in our May 14, 1999 letter to you, "In 1987, the Legislature amended section 62.1 to, among other things, delete the requirement that the acquiring entity be only a nonprofit corporation, stock cooperative corporation, or other entity, as described in section 50561 of the Health and Safety Code (a condominium or stock cooperative), with the intent of expanding the scope of the exclusion to bona fide transfers of parks to tenant ownership in the form of any nonprofit corporation, stock cooperative corporation, or other entity. Stats. 1987, ch. 1344; see Letter To Assessors No. 88/44."

The following year, the Legislature amended subdivision (c) of section 62.1 to provide that a transfer of stock or an ownership interest in a mobilehome park is a change in ownership of a pro rata portion of the real property of the park, if the park had previously been transferred in a transaction qualifying under subdivision (a), but had not been converted to condominium or stock cooperative ownership. Senate Bill 1885/Stats. 1988, ch. 1076. (See Letter To Assessors No. 89/13, enclosed.) In adopting the foregoing language under subdivision (c), the Legislature was doing so with the intent to cause the transfers of ownership interests in the entities acquiring parks to be changes in ownership of the portion of property transferred and reassessable for property tax purposes, similar to transfers of other mobilehome park units and homes.

It was in this same 1988 legislation (SB 1885) that the Legislature added the phrase, "or limited equity cooperative ownership" to the pre-existing language, "has not been converted to condominium or stock cooperative ownership." The result was an expansion of the provision for pro rata change in ownership assessments in section 62.1(c) to limited equity cooperatives - which concern the Taxpayer.

We have reviewed the legislative history of SB 1885, and found no evidence of any intent by the Legislature to exclude from change in ownership the transfers of membership interests in limited equity cooperatives. To the contrary, the intent was that all transfers of ownership interests in previously excluded mobilehome parks should be treated as changes in ownership. The addition of the phrase, "or limited equity cooperative ownership" was made in the August 1, 1988 author's amendments to S.B. 1885. In a Memorandum from the attorney working with the Legislature on the bill, former Assistant Chief Counsel Richard H. Ochsner, to the Board's Legislative Counsel, transmitting these amendments, Mr. Ochsner explained

"The amendments were prepared by [legislative staff] in response to a comment regarding the use of 'stock cooperative corporation' in section 62.1. Apparently the definition in the Business and Professions Code of 'stock cooperative corporation' specifically excludes a limited equity stock cooperative. See B&P Code sections 11003.2 and 11003.4. For change in ownership purposes, both types of co-op would fall within our definition of a 'cooperative housing corporation' as defined in section 61(h).¹ The proposed amendments are designed to make it clear that both types of cooperative are included under section 62.1. . . ."²

Thus, analysis contemporaneous with the amendment adding "or limited equity cooperative ownership" to section 62.1(c) actually supports the view that the pro rata reassessment provisions of that

¹ Section 61(h) was subsequently relettered section 61(i).

² Apparently, we advised the legislative staff member that the technically correct approach would be to substitute the term "cooperative housing corporation" for "stock cooperative corporation", since, in our opinion, that term would include both types of cooperatives since a membership in the corporation in each case is coupled with the exclusive right to possess a portion of the property. Apparently the legislative staff member felt it was better to just add the reference to the limited equity stock cooperative. Mr. Ochsner noted "While I would have preferred to use a single term in section 62.1 which is consistent with the terms used in section 61, I have no serious objection to the amendment since it appears to fall within what we originally intended."

section are intended to, and do, match the reassessment change in ownership provisions of section 61(i). In other words, transfers of interests of stock cooperative ownership and limited equity cooperative ownership are changes in ownership of a pro rata portion of the real property of the park under section 62.1(c), because such transfers are *already* treated as changes in ownership under section 61(i).³ This is because it was understood that both “limited equity cooperatives” and “stock cooperatives”, as used in section 62.1, are included in the phrase “cooperative housing corporation” used in section 61(i).⁴

This view is consistent with the view of other Legislative enactments of that time. In 1985, for example, the Legislature enacted the Davis-Stirling Common Interest Development Act. Civil Code §1350 *et seq.* Subdivision (m) of section 1351 thereof defines “stock cooperative”, and provides, in part: “A ‘stock cooperative’ includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.”

We are aware, of course, that section 61(i) literally speaks of “the transfer of *stock*”, and “a real estate development in which membership in the corporation, *by stock ownership*, is coupled . . .”, and of the fact that in the case of Taxpayer's and many other limited equity cooperatives, membership interests are not represented by “stock.” However, the key element representing ownership, and change in ownership, for property tax purposes is, as set forth in section 61(i): “The transfer [of an ownership interest] of a cooperative housing corporation, vested with legal title to real property that conveys to the transferee the *exclusive right to occupancy and possession* of that property, or a portion thereof. . . membership in the corporation . . . is *coupled with the exclusive right to possess a portion of the real property*.”

Even if section 61(i) is not a precise fit, by its terms, it does not purport to contain an exclusive list of transfers which constitute changes in ownership. (At the outset, section 61 states, “Except as otherwise provided in section 62, change in ownership, as defined in section 60, *includes, but is not limited to* . . .”). Section 60 also provides the basic definition of change in ownership, which is the general test to be applied whenever a specific rule is not apparent.

Section 60 states,

A “change in ownership” means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

In Industrial Indemnity Company v. City and County of San Francisco (1990) 218 Cal. App. 3d 999, a property owner entered into an arrangement with another party for the sale and leaseback of its

³ The other listed exception, condominiums, would also obviously already be reassessable as transfers of separately owned individual parcels.

⁴ Revenue and Taxation Code section 61 provides: “. . . change in ownership, as defined in Section 60, includes, but is not limited to: [¶] (i) The transfer of stock of a cooperative housing corporation, vested with legal title to real property that conveys to the transferee the exclusive right to occupancy and possession of that property, or a portion thereof. A ‘cooperative housing corporation’ is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.”

real property for a period of fifty years. The assessor reassessed the property as a change in ownership. Applying the section 60 "change in ownership" test, the court concluded that the test was satisfied with respect to the sale portion of the transaction as well as the leaseback portion because in each case there was a transfer of a present interest in real property including the beneficial use of the property the value of which was substantially equal to the value of the fee interest.

The basic definition of section 60 is intended as a guidepost in cases not covered by the specific inclusions or exclusions of other taxation statutes or article XIII A itself. (*Allen v. Sutter County Bd. of Equalization* (1983) 139 Cal App. 3d 887, 891-892 [189 Cal. Rptr. 101]; see §§ 61, subd. (c)(1), 62, subd. (e).) As we have seen, the subject sale and leaseback does not come within any other statute or regulation. Therefore, we apply the basic definition of section 60, and find that this transaction constitutes two changes in ownership within the meaning of that section. . . . (pg. 1010)

Applied to transfers in limited equity cooperatives, the section 60 definition of change in ownership is met. Just as with respect to a stock cooperative, the transfer of a membership in a limited equity cooperative transfers that interest to another owner, and conveys the right to the present beneficial use of a portion of the property, which use is substantially equivalent to the fee.

Such a transfer represents a "present interest." in a specific portion of the property. Civil Code §689 states: "A present interest entitles the owner to the immediate possession of the property." Inasmuch as the membership grants the continuous, exclusive and uninterrupted use without limitation as to time, it transfers a present interest in the property, not a deferred or future interest.

The transfer of a membership includes a transfer of the "beneficial use." The beneficial use is "The right to use property and all that makes the property desirable or habitable . . . even if someone else owns the legal title to the property." (Blacks Law Dictionary, 7th Edition, p. 1540) This definition squares exactly with the situation before us. The member is granted "the exclusive occupancy and possession of" a specific portion of the park's real property, the same as in a stock cooperative. The member has the right to dispose of his membership and any structures, improvements and personal property located on the site.

Finally, the interest transferred is "substantially equivalent to the value of the fee" within the meaning of section 60. As stated in the *Report of the Task Force on Property Tax Administration*, at page 39: "The value equivalence test is necessary to determine who is the primary owner of the property at any given time." It seems clear to us that the member is the primary owner of that portion of the property, because that person holds the vast majority of the incidents of ownership.

Taxpayer observes that limited equity cooperatives restrict ownership of a portion of the corporate equity to the corporation itself, implying that what is transferred is substantially of lesser value than a fee transfer. However, it is clear that each member obtains virtually the entire value of the portion of the property transferred, in that he obtains the full use of that property. A member in a limited equity cooperative, as a practical matter, obtains rights with respect to the real property that are exclusive and nearly indistinguishable from those obtained by a stockholder in a stock cooperative.

Therefore, it is our opinion that the transfer of a membership interest in a limited equity cooperative is a transfer of ownership interest in a cooperative housing corporation as that phrase is utilized in section 61(i), and a transfer within the meaning of section 60, and constitutes a change in ownership for property tax purposes.

We would, however, call your attention to subdivision (i) of section 62 of the Revenue and Taxation Code. That section excludes from change in ownership, transfers of stock or membership in housing cooperatives that were financed under various federal and state low income housing assistance programs. We mention this because, in his letter Taxpayer makes passing reference to the fact of his park being exempt from the requirements of the Subdivided Lands Act due to its compliance with Business and Professions Code section 11003.4, subdivision (b). One of the requirements of that provision is that the construction or development costs be financed or subsidized under various federal, state or local programs. We have not been asked to give an opinion as to whether this park qualifies under section 11003.4(b) and also entitles the park members to the exclusion of section 62(i), nor have we been given any information to analyze in this regard. As a consequence, we do not express any opinion on this matter. However, it may be an area for further investigation by your offices or Taxpayer.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Daniel G. Nauman

Daniel G. Nauman
Senior Tax Counsel

Enclosure (LTA Nos. 88/44 and 89/13)

DGN:eb

Precedent/coowners/01/11dgn.doc

cc: Mr. Dick Johnson, MIC:63
Mr. Charles Knudsen, MIC:62
Mr. David Gau, MIC:64
Mr. Jennifer Willis, MIC:70